

FILED

AUG 28 1979

MICHAEL HEDAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1979

No.

79-321

LACLEDE GAS COMPANY

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION
AND
MISSISSIPPI RIVER TRANSMISSION CORPORATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

J. DAVID MANN, JR.
KAROL LYN NEWMAN
KAREN B. PANCOST
1800 M Street, N.W.
Washington, D.C. 20036
(202) 872-5000

Counsel for Petitioner

Of Counsel:
MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036

August 28, 1979

TABLE OF CONTENTS

	Page
ORDERS BELOW	2
JURISDICTION	2
QUESTION PRESENTED	2
STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
1. The Decision of The D.C. Circuit Directly Conflicts With TECA's Decision in <i>Lo-Vaca</i> <i>Gathering Co. v. Railroad Commission of</i> <i>Texas</i> and Denies Petitioner Judicial Review	6
2. The Jurisdictional Dispute Between The D.C. Circuit and TECA Raises Significant And Recurring Problems Regarding The Proper Forum In Which Review Proceedings May Be Brought	10
3. The D.C. Circuit's Decision Improperly Ascribes A New Legal Basis For The Commission's Action	11
CONCLUSION	12

**APPENDIX A—Orders of the United States Court
of Appeals For The District of Columbia Circuit**

Order Dismissing For Lack of Jurisdiction	A-2
Order Denying Rehearing	A-5
Order Denying Suggestion For Rehearing <i>En Banc</i>	A-6

**APPENDIX B—Orders of the Federal Energy
Regulatory Commission**

Federal Power Commission Letter Order Advising That Tariff Sheets Have Been Accepted For Filing	A-8
Order Granting Rehearing For Purposes Of Further Consideration And Granting Motion To Waive Section 1.34 Of The Commission's Rules	A-10
Order Granting Rehearing, Vacating Prior Order, Granting Intervention, And Terminating Proceeding	A-14
Order Denying Rehearing, Denying Motion To Strike, And Granting Waiver Of Regulations	A-32

APPENDIX C—Relevant Statutory Provisions

Emergency Natural Gas Act of 1977 15 U.S.C. § 717 note (Supp. I 1979)	A-38
--	------

Natural Gas Act, Sections 1, 4, and 19 15 U.S.C. §§ 717, 717c, 717r	A-57
Natural Gas Policy Act, Sections 301, 302, 506(c), 601 15 U.S.C.A. §§ 3361, 3362, 3416(c), 3431	A-64

TABLE OF CITATIONS

CASES

<i>Atlantic Refining Co. v. Public Service Commission</i> , 360 U.S. 378 (1959)	9
<i>Lo-Vaca Gathering Co. v. Railroad Commission of Texas</i> , 565 F.2d 144 (Em. App. 1977)	<i>passim</i>
<i>SEC v. Chenery Corp.</i> , 332 U.S. 194 (1957)	11

STATUTES

Emergency Natural Gas Act of 1977, 15 U.S.C. § 717 note (Supp. I 1979)	<i>passim</i>
Natural Gas Act, 15 U.S.C. § 717 <i>et seq.</i> (1977)	<i>passim</i>
Natural Gas Policy Act of 1978 15 U.S.C.A. § 3301 <i>et seq.</i> (1979)	10, 11, 12
28 U.S.C. § 1254(1) (1977)	2

IN THE
Supreme Court of the United States

OCTOBER TERM, 1979

No.

Laclede Gas Company,

Petitioner,

v.

**Federal Energy Regulatory Commission
and
Mississippi River Transmission Corporation,**

Respondents.

**PETITION FOR A WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Laclede Gas Company prays that a writ of certiorari issue to review the judgment and order of the United States Court of Appeals for the District of Columbia Circuit, entered April 19, 1979, dismissing for lack of jurisdiction its petition to review orders of the Federal Energy Regulatory Commission.

ORDERS BELOW

The orders of the court of appeals are unreported and are reproduced in full in Appendix A. The orders of the Federal Energy Regulatory Commission are unreported and are reproduced in full in Appendix B.

JURISDICTION

The court of appeals entered judgment on April 19, 1979, and denied a timely petition for rehearing on May 30, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the United States Court of Appeals for the District of Columbia Circuit can abdicate its jurisdiction under the Natural Gas Act to review orders of the Federal Energy Regulatory Commission, and thereby deprive Petitioner of its right to judicial review by ruling that the agency orders were issued under the Emergency Natural Gas Act of 1977, review of which must be brought in the Temporary Emergency Court of Appeals where (a) the agency declared that it had acted under the Natural Gas Act and (b) the Temporary Emergency Court of Appeals had held in *Lo-Vaca Gathering Co. v. Railroad Commission of Texas*, 565 F.2d 144 (1977) that its jurisdiction under the Emergency Natural Gas Act of 1977 is limited to review of actions of the President or his delegate, the Administrator.

STATUTORY PROVISIONS INVOLVED

The relevant sections of the Natural Gas Act, 15 U.S.C. § 717, *et seq.* (1977); the Emergency Natural Gas Act of 1977, 15 U.S.C. § 717 note (Supp. I 1979); and the Natural Gas Policy Act of 1978, 15 U.S.C.A. § 3301, *et seq.* (1979) are set forth in Appendix C.

STATEMENT OF THE CASE

This case involves a dispute between Laclede Gas Company ("Laclede"), a public utility serving the St. Louis, Missouri, area, and its sole supplier of natural gas, Mississippi River Transmission Corporation ("MRT"). The dispute concerned certain tariff sheets filed with the Federal Energy Regulatory Commission ("Commission") under which MRT sought to collect from its regular system customers, including Laclede, rates and surcharges to reimburse MRT for costs charged to it by United Gas Pipe Line Company ("United"), MRT's principal supplier, for emergency natural gas supplies purchased by United under the Emergency Natural Gas Act of 1977 ("ENGA").

Under established Commission procedures, Laclede protested MRT's tariff filing, challenged the propriety of the charges, sought a hearing and requested that MRT's tariff sheets be suspended for one day and made effective subject to refund. By letter order of September 30, 1977,¹ the Commission initially granted Laclede's request but, on rehearing which was sought by MRT, reversed itself, denied Laclede a hearing and permitted the tariff sheets to become effective without refund liability.²

¹Appendix B at A-8.

²Appendix B at A-14.

Laclede sought rehearing, asking for an opportunity to show that under its filing, MRT would receive windfall profits by assigning all of the emergency gas and related, higher charges to its regular system customers, despite its having sold a like volume of lower-cost, regular system supply off-system to Natural Gas Pipeline Company of America ("Natural") under Commission regulations at similarly high emergency prices. Laclede contended that, if hearings were held, it would show that a major part of the \$8.1 million which MRT had paid United for the emergency gas, and was seeking to assign to its system customers, was actually recouped by MRT through its own off-system, emergency sale to Natural.

On April 24, 1978, the Commission denied Laclede's petition for rehearing and summarily disposed of Laclede's contentions.³ Laclede then sought review of the Commission's orders in the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit").

In a *per curiam* order, the D.C. Circuit dismissed Laclede's petition for review, disclaiming jurisdiction to review the Commission's orders on the ground that the Commission had "acted under ENGA in aid of the President's delegated authority." The D.C. Circuit concluded:

It follows, we think, that suits concerning the exercise of that authority arise under ENGA for purposes of judicial review, which is . . . lodged solely in the Temporary Emergency Court of Appeals.⁴

³Appendix B at A-32.

⁴Appendix A at A-3.

Laclede sought rehearing explaining to the court that the Commission did not act under ENGA; that the Temporary Emergency Court of Appeals ("TECA") had held that its jurisdiction under ENGA is limited to suits challenging actions by the Administrator, and no such action is involved; that the Commission issued its orders in the exercise of its authority under the Natural Gas Act ("NGA"); that TECA has no power to review Commission orders issued under the NGA; and that Section 19(b) of the NGA places jurisdiction over petitions to review Commission action exclusively in the courts of appeals. Therefore, Laclede explained, the effect of the dismissal was to deprive Laclede of a forum in which to obtain review of the Commission's orders. The D.C. Circuit denied rehearing.⁵

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari for the following reasons:

1. The decision of the D.C. Circuit directly conflicts with TECA's decision in *Lo-Vaca Gathering Company v. Railroad Commission of Texas, supra*, the effect of which is to deny Petitioner judicial review of the orders of the Commission;

2. The jurisdictional dispute between the D.C. Circuit and TECA raises significant and recurring problems regarding the proper forum in which review proceedings may be brought; and

3. The D.C. Circuit's decision disregards the rule of *SEC v. Chenery Corp.*, 332 U.S. 194 (1947).

⁵Appendix A at A-5 to 6.

1. The Decision of The D.C. Circuit Directly Conflicts With TECA's Decision in *Lo-Vaca Gathering Co. v. Railroad Commission of Texas* And Denies Petitioner Judicial Review

The decision below conflicts with the only reported court opinion interpreting the judicial review provisions of ENGA. That opinion, rendered by TECA in *Lo-Vaca Gathering Co. v. Railroad Commission of Texas, supra*, is factually indistinguishable from the present case and irreconcilable with the D.C. Circuit's decision.

In that case, Lo-Vaca Gathering Co. ("Lo-Vaca"), an intrastate pipeline, had been ordered by the Administrator to transport natural gas pursuant to ENGA. The Administrator fixed the compensation that Lo-Vaca was to receive for transporting such gas. The Railroad Commission of Texas issued an order instructing Lo-Vaca how to allocate the compensation realized among its customers. Lo-Vaca claimed that the effect of the order was to lessen the compensation it was entitled to receive under ENGA and appealed to TECA to set aside the order. TECA ruled that its jurisdiction under ENGA was limited to review of actions taken by the Administrator under the Act and that it could not review actions of a state regulatory commission.

In this case, the D.C. Circuit refused to review the Commission's orders concerning whether MRT could properly charge the ENGA costs in the manner that it proposed. Instead, the D.C. Circuit held that the Commission's orders were reviewable by TECA. It is undisputed that the Administrator of ENGA issued no

order respecting MRT's transactions. The Administrator not having acted, an original claim could not be brought in TECA. By refusing to review the Commission's orders through a misunderstanding of ENGA and its interaction with the NGA, the D.C. Circuit has left Laclede without a forum.

The Emergency Natural Gas Act of 1977 was enacted to alleviate the problems created by the critical shortage of natural gas experienced during the 1976-77 winter. The crisis arose, in part, because the NGA did not give the Commission the power to issue orders requiring the transfer of natural gas supplies from the intrastate to the interstate market. To permit and encourage such transfers, ENGA authorized the President or his delegate (the Administrator)⁶ to exempt certain specified transactions from regulation under the NGA. Thus, the price of emergency natural gas was to be "fair and equitable"; not "just and reasonable" as required by Section 4 of the NGA. Additionally, once the Administrator approved a purchase under Section 6(a), the transaction could go forward without the certificate of public convenience and necessity that would normally be required by Section 7 of the NGA. ENGA suspended the applicability of the NGA as to (1) any sale of natural gas authorized by the Administrator to an interstate pipeline company or a local distribution company by any qualified producer, intrastate pipeline, local distribution company, or other person (the term "person" excludes interstate pipelines and producers);⁷ (2) any transportation by an intrastate pipeline in connection with the authorized sale of emergency natural gas by a qualified producer, intrastate pipeline, local distribution company,

⁶Exec. Order No. 11969, 3 C.F.R. 93 (1978), reprinted in 15 U.S.C. § 717 at 289 (Supp. I 1979).

⁷15 U.S.C. sec. 717 note, § 6(b)(1)(A) (Supp. I 1979).

or other person (the term "person" excludes interstate pipelines and producers);⁸ or (3) any natural gas company for either the sale or transportation of emergency gas supplies if such sale or transportation had been specifically approved by the Administrator. These provisions apply *only* to the authorized purchaser or transporter. ENGA does not authorize sales of emergency gas between interstate pipelines and does not exempt any such sale from the provisions of the NGA.⁹

Section 6(b)(2) is the only provision of ENGA which restricts the Commission's authority over those natural gas companies subject to its jurisdiction which did not make purchases or provide transportation pursuant to Section 6(a) authorization, such as MRT. Section 6(b)(2) of ENGA expressly provides:

In exercising its authority under the Natural Gas Act, the Federal Power Commission shall not disallow, in whole or in part, recovery by any interstate pipeline, through the rates and charges made, demanded, or received by such pipeline, the amounts actually paid by it for natural gas purchased, transported, or other costs incurred. . . .

15 U.S.C. sec. 717 note, § 6(b)(2) (Supp. I 1979) (emphasis added). No further limitations on the Commission's authority to act under the NGA were specified. In fact, to ensure NGA applicability, Section 8 of ENGA provides:

⁸*Id.*

⁹These "emergency sales", like that made between MRT and Natural, are routinely made between interstate pipeline companies under the Commission's regulations. *E.g.*, 18 C.F.R. § 157.22 (1978).

Except as expressly provided in this Act, nothing contained in this Act shall be interpreted to change, modify, or otherwise affect rules, regulations, or other regulatory requirements or procedures of the Federal Power Commission pursuant to the provisions of the Natural Gas Act.

15 U.S.C. sec. 717 note, § 8 (Supp. I 1979).

Therefore, according to the plain language of ENGA, the NGA is fully applicable to the flow-through of costs from MRT to its resale customers, such as Laclede. The only restriction on the Commission's exercise of jurisdiction over MRT's collection of rates and charges as reimbursement for costs attributable to United's ENGA purchases was that, in determining whether the MRT's *overall* rates were just and reasonable, the Commission could not disallow ENGA costs.¹⁰ MRT received no immunity from Commission scrutiny under the NGA because of the flow-through of ENGA costs. ENGA does not confer transactional immunity. Nor does ENGA eliminate the Commission's traditional duty to ensure that consumers are protected from excessive rates and charges of natural gas companies. *See Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 388 (1959). That duty necessarily includes the need to scrutinize the recovery of ENGA costs by intermediate pipelines such as MRT. Thus, it is clear from an examination of the interaction between ENGA and the NGA that, because TECA was correct in *Lo-Vaca*, the D.C. Circuit was wrong in its

¹⁰15 U.S.C. sec. 717 note, § 6(b)(2) (Supp. I 1979).

decision below. Jurisdiction to review orders of the Administrator lies in TECA; jurisdiction to review orders of the Commission lies in the circuit courts of appeals.

2. The Jurisdictional Dispute Between The D.C. Circuit and TECA Raises Significant And Recurring Problems Regarding The Proper Forum In Which Review Proceedings May Be Brought

Although the statute in question, ENGA, has terminated, the provisions of ENGA at issue in this case have been enacted in virtually identical form as a part of the Natural Gas Policy Act of 1978 ("NGPA"). Section 301 of the NGPA, like ENGA Section 3, authorizes the President to declare a natural gas emergency. Section 302(a), which authorizes the President to permit emergency purchases of natural gas, is virtually identical to ENGA Section 6(a). As in ENGA Section 6(b)(2), NGPA Section 601 prohibits the Commission from denying the flow through by an interstate pipeline company of costs from sales authorized under Section 302. Additionally, NGPA Section 506(c) provides that TECA shall have the sole jurisdictional authority to hear cases and controversies arising under the NGPA. Section 302 orders authorizing purchases and sales of emergency natural gas.¹¹

The goal of the emergency legislation at issue here, and that incorporated into the NGPA, is to permit immediate relief to consumers in critical supply shortages. Obviously, the natural gas companies which acquire such emergency supplies should be compensated for the admittedly higher

¹¹See Appendix C at A-64 to 73.

costs incurred to alleviate the emergency. This does not mean, however, that a natural gas company should be permitted to abuse the purpose of remedial legislation to obtain windfall profits for its shareholders at the expense of its ratepayers. The juxtaposition of the D.C. Circuit's decision in this case with that of TECA in the *Lo-Vaca* case eliminates any opportunity for judicial review of the Commission's actions concerning flow-through to the ratepayers of the extraordinary costs involved.

Laclede has been placed in an untenable posture in this case by having been denied its right to judicial review of Commission orders guaranteed to it by the NGA. The court orders interpreting the jurisdiction of TECA and the circuit courts of appeals present an irreconcilable conflict which will leave future ratepayers, in cases arising under the NGPA, without a forum to challenge questionable agency orders such as those issued in this case.

3. The D.C. Circuit's Decision Improperly Ascribes A New Legal Basis For The Commission's Action

The Commission's brief to the D.C. Circuit expressly stated that the Commission had acted under the NGA. The D.C. Circuit, however, ruled that the Commission acted under ENGA. A court may not ascribe a new legal basis for the Commission's action, *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947).

If the D.C. Circuit had accepted the Commission's statement of the statutory authority under which it had acted—the NGA—there would be no question of its jurisdiction and duty to review. By construing the Commission's action as action under ENGA, the D.C. Circuit abdicated its jurisdiction and deprived Laclede of its right to judicial review of the Commission's orders.

If this Court denies this Petition, a gap will have been created by which certain Commission action regarding the rates and charges of a natural gas company such as those in this case will evade judicial review by falling through the crack between two pieces of legislation, both of which were enacted to aid and protect the public—the NGA and ENGA.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

J. DAVID MANN, JR.
KAROL LYN NEWMAN
KAREN B. PANCOST
1800 M Street, N.W.
Washington, D.C. 20036

Counsel for Petitioner

Of Counsel:

MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036

August 28, 1979

APPENDIX A

APPENDIX A

Orders Of The United States Court Of Appeals For The
District Of Columbia Circuit.

Title	Page
Order Dismissing For Lack of Jurisdiction	A-2
Order Denying Rehearing	A-5
Order Denying Suggestion For Rehearing <i>En Banc</i>	A-6

IN THE
United States Court of Appeals
 FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1379

Filed: APR 19 1979

Laclede Gas Company,

Petitioner

v.

Federal Energy Regulatory Commission,

Respondent

Mississippi River Transmission,

Intervenor

BEFORE: McGowan and Wilkey, Circuit Judges; and
 Corcoran*, Senior District Judge, United
 States District Court for the District of
 Columbia

ORDER

This cause came on to be heard on a petition for review of an order of the Federal Energy Regulatory Commission and was argued by counsel. The Court is of

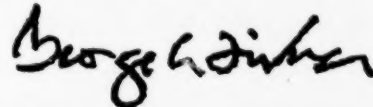
*Sitting pursuant to Title 28 U.S.C. § 294(d).

the opinion that petitioner's suit arises under the Emergency Natural Gas Act of 1977, Pub. L. No. 95-2, 91 Stat. 4, and in accordance with § 10(b) of the Act, is within the exclusive jurisdiction of the Temporary Emergency Court of Appeals, established pursuant to § 211(b) of the Economic Stabilization Act of 1970, as amended. The instant petition calls into question the manner by which Intervenor Mississippi River Transmission Corp. has sought to recover from its customers, including petitioner, charges incurred by it for certain purchases of natural gas. We agree with the Commission and Intervenor Mississippi that the purchases in question, although made from another interstate pipeline, were pursuant to § 6 of ENGA and as such were expressly exempted from the terms of the Natural Gas Act, 15 U.S.C. §§ 717a-w. The recovery of amounts paid by interstate pipelines for § 6 purchases is, we think, governed exclusively by ENGA, and by the ENGA Administrator's Order No. 7, which order was issued under authority delegated by the President pursuant to ENGA § 13. *See* Executive Order No. 11969, 42 F.R. 6791 (2 Feb. 1977). In accordance with Order No. 7, Intervenor Mississippi filed with the Commission the tariff sheets at issue in the subject proceeding. Insofar as the Commission had any authority whatsoever to review the filing's conformance with ENGA and Order No. 7, a question we have no occasion to decide, it acted under ENGA in aid of the President's delegated authority. It follows, we think, that suits concerning the exercise of that authority arise under ENGA for purposes of judicial review, which is, as we have said, lodged solely in the Temporary Emergency Court of Appeals. Because this Court is without jurisdiction to entertain the instant petition, it is

ORDERED, by the Court, that the petition for review filed herein be, and it is hereby, dismissed.

Per Curiam

FOR THE COURT:



GEORGE A. FISHER
Clerk

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1379

Filed: MAY 30 1979

Laclede Gas Company,

Petitioner

v.

Federal Energy Regulatory Commission,

Respondent

Mississippi River Transmission,

Intervenor

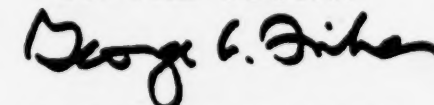
BEFORE: McGowan and Wilkey, Circuit Judges; and
Corcoran*, Senior Judge, United States
District Court for the District of Columbia

ORDER

Upon consideration of petitioner's petition for rehearing, it is ORDERED, by the Court, that petitioner's aforesaid petition for rehearing is denied.

Per Curiam

FOR THE COURT:



GEORGE A. FISHER
Clerk

*Sitting by designation pursuant to Title 28 U.S.C. § 294(d).

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1379

Filed: MAY 30 1979

Laclede Gas Company,

Petitioner

v.

Federal Energy Regulatory Commission,

Respondent

Mississippi River Transmission,

Intervenor

BEFORE: Wright, Chief Judge; Bazelon, McGowan,
Tamm, Leventhal, Robinson, MacKinnon,
Robb, and Wilkey, Circuit Judges

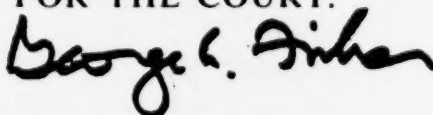
ORDER

The suggestion for rehearing *en banc* filed by petitioner Laclede Gas Company, having been transmitted to the full Court and no judge in regular active service having requested a vote with respect thereto, it is

ORDERED, by the Court, that petitioner's aforesaid suggestion for rehearing *en banc* is denied.

Per Curiam

FOR THE COURT:



GEORGE A. FISHER

Clerk

Chief Judge Wright did not participate in the foregoing order.

APPENDIX B

APPENDIX B**Orders Of The Federal Energy Regulatory Commission.**

Title	Page
Federal Power Commission Letter Order Advising That Tariff Sheets Have Been Accepted For Filing	A-8
Order Granting Rehearing For Purposes Of Further Consideration And Granting Motion To Waive Section 1.34 Of The Commission's Rules	A-10
Order Granting Rehearing, Vacating Prior Order, Granting Intervention And Terminating Proceeding	A-14
Order Denying Rehearing, Denying Motion To Strike, And Granting Waiver Of Regulations	A-32

FEDERAL POWER COMMISSION
Washington, DC 20426

SEPT 30 1977

In reply refer to:
BNG-76
Mississippi River Transmission
Corporation
Docket No. RP72-149
(PGA 77-10)

Mississippi River Transmission
Corporation
9900 Clayton Road
St. Louis, Missouri 63124

Attention: C. R. Eberst, Jr., Vice President, Rates

Reference: (1) Fifty-Ninth Revised Sheet No. 3A
(2) Original Sheet No. 3B
(3) Alternate Original Sheet No. 3B to FPC
Gas Tariff, First Revised Volume No. 1.

Gentlemen:

The tariff sheet referred to in Item (1) above containing increased rates to recover increased purchased gas costs and transportation costs, has been accepted effective October 1, 1977. Such acceptance is subject to modification to reflect any changes in the rate of Natural Gas Pipeline Company of America being tracked herein.

The tariff sheet referred to in Item (3) containing alternate individual customer surcharges to recover ENGA costs (including storage costs over an eleven month period) is suspended for one day and made effective subject to refund as of October 2, 1977. The tariff sheet referred to in Item (2) containing alternate individual

surcharges to recover ENGA costs (including storage costs over a five month period) is rejected without prejudice to this being considered as an issue in these proceedings.

A hearing shall be held in this proceeding at a later date to be established by this Commission.

The petition to intervene by Laclede Gas Company is hereby granted.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in your tariff; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

By direction of the Commission.

Kenneth F. Plumb
Secretary

cc. William W. Bedwell
Bedwell and Rudolph
502 Madison Building
1155 — 15th Street, N.W.
Washington, D.C. 20005

All Parties

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

REHEARING: GRANTED,
PRACTICE AND PROCEDURE

Before Commissioners:

Charles B. Curtis, Chairman;
Don S. Smith, Georgiana Sheldon,
Matthew Holden, Jr., and George R. Hall

Mississippi River Transmission) Docket No. RP72-149
Corporation) (PGA77-10)

ORDER GRANTING REHEARING
FOR PURPOSES OF FURTHER
CONSIDERATION AND GRANTING MOTION
TO WAIVE SECTION 1.34 OF
THE COMMISSION'S RULES

(Issued November 28, 1977)

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 Fed. Reg. 46267 (September 15, 1977), the Federal Power Commission (FPC) ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC or Commission) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of Section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by Section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977 by the Secretary and the FERC entitled "Transfer on Proceedings to the Secretary of Energy and the FERC," 10 CFR — provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

On August 31, 1977, Mississippi River Transmission Corporation (MRT) filed tariff sheets in this proceeding reflecting increased gas rates. On September 27, 1977, Laclede Gas Company (Laclede) filed a petition to intervene and protest to MRT's proposed higher rates.

Laclede objects on two grounds to MRT's treatment of the costs associated with Emergency Natural Gas Act of 1977 (ENGA)¹ gas purchases by United Gas Pipe Line Company (United) which were allocated to MRT. First, Laclede questions the appropriateness of recovering ENGA costs, and carrying charges thereon, which MRT has allocated to storage and requests that MRT be

¹Act of February 2, 1977, Pub. L. No. 95-2, 91 Stat. 4.

required to modify its filing so as to exclude these costs. These ENGA costs related to storage total approximately two million dollars or one quarter of the total costs associated with ENGA gas purchases by United allocated to MRT. Second, Laclede challenges MRT's flow through of the balance of the gas costs associated with the ENGA gas purchased by United. Because MRT owns and operates substantial storage facilities, Laclede alleges that the method used for the assignment of these gas costs may well represent an allocation of costs that is unduly prejudicial to MRT's jurisdictional customers.

On September 30, 1977, the FPC by letter order, *inter alia*, suspended for one day and made effective, subject to refund, on October 2, 1977, the increased rates to recover MRT's costs associated with purchases by United of the ENGA gas during the period February 1977 through July 1977.² The letter order also grants the petition to intervene filed by Laclede and states:

A hearing shall be held in this proceeding at a later date to be established by this Commission.

On October 27, 1977, MRT filed an application for rehearing questioning the Commission's actions. On November 14, 1977, Laclede filed a motion for leave to file a response to MRT's application for rehearing and a response to the application for rehearing.

In order to more fully consider the issues raised by MRT and Laclede, which involve the proper interpretation of the ENGA and the Natural Gas Act, it is appropriate and in the public interest to grant MRT's application for rehearing for purposes of further consideration and to grant Laclede's motion to waive the

²Alternate Original Sheet No. 3B to MRT's Gas Tariff, First Revised Volume No. 1.

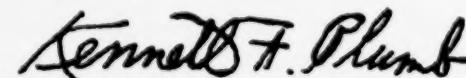
provisions of Section 1.34 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.34 (1977), so as to consider Laclede's filing. Since Laclede is the only party to this proceeding, no other response within the meaning of Section 1.34(d), to MRT's application for rehearing is contemplated under the rules.

The Commission Orders:

- (a) Laclede's motion to waive the provisions of Section 1.34 of the Commission's Rules of Practice and Procedure is granted.
- (b) MRT's application for rehearing is hereby granted for purposes of further consideration.

By the Commission.

(S E A L)



Kenneth F. Plumb,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PIPELINE RATES:
[Rehearing, Emergency
Natural Gas Act of
1977, Jurisdiction]

Before Commissioners:

Charles B. Curtis, Chairman;
Don S. Smith, Georgiana Sheldon,
Matthew Holden, Jr., and George R. Hall.

Mississippi River Transmission) Docket No. RP72-149
Corporation) (PGA77-10)

ORDER GRANTING REHEARING,
VACATING PRIOR ORDER,
GRANTING INTERVENTION, AND
TERMINATING PROCEEDING

(Issued February 27, 1978)

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 Fed. Reg. 46267 (September 15, 1977), the Federal Power Commission (FPC) ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC or Commission) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of Section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by Section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977 by the Secretary and the FERC entitled "Transfer on Proceedings to the Secretary of Energy and the FERC," 10 CFR —, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

On August 31, 1977, Mississippi River Transmission Corporation (MRT) tendered for filing with the Federal Power Commission (FPC) certain revised tariff sheets to its Gas Tariff setting forth increased rates proposed by MRT to become effective on October 1, 1977. The proposed rates reflect MRT's share of costs flowed-through by its supplier, United Gas Pipe Line Company (United) attributable to emergency gas purchases made by United under the Emergency Natural Gas Act of 1977 (ENGA).¹ The proposed rates also include carrying charges on MRT's share of the emergency gas costs.

¹Pub. L. No. 95-2, 91 Stat. 4 (1977).

On September 27, 1977, Laclede Gas Company (Laclede) filed a protest and petition to intervene that objected on two grounds to MRT's treatment of the costs associated with ENGA gas purchases by United as allocated to MRT. First, Laclede questions the appropriateness of recovering ENGA costs, and carrying charges thereon, which have been allocated to storage and requests that MRT be required to modify its filing so as to exclude these costs. Second, Laclede challenges the allocation of the balance of the gas costs associated with the ENGA gas purchased by United. Because MRT owns and operates substantial storage facilities, Laclede alleged that the monthly assignment of gas costs may well represent a misallocation of costs that is unduly prejudicial to MRT's jurisdictional customers.

MRT's proposed rates were suspended by the FPC by letter order dated September 30, 1977, and were permitted to become effective on October 2, 1977, subject to refund. The letter order permitted Laclede to intervene in the proceeding and provided, in addition, that: "A hearing shall be held in this proceeding at a later date to be established by this Commission."

On October 27, 1977, MRT filed an application for rehearing, questioning the Commission's actions in the September 30, 1977, letter order.² On November 14, 1977, Laclede filed a response to MRT's application for

²On November 16, 1977, Illinois Power a customer of MRT, filed an untimely petition to intervene. Illinois Power Company cites Laclede's September 27, 1977, protest and states that the increase sought by MRT is excessive and may be unjust and unreasonable. We grant this petition to intervene hereinafter.

rehearing.³ Rehearing for purposes of further consideration was granted on November 28, 1977. For the reasons set forth in this order, the Commission shall grant MRT's application for rehearing.

MRT argues that the Commission erred because it lacks jurisdiction to take action with respect to recovery of ENGA costs, because the Commission did not permit MRT to respond to Laclede's protest of September 27, 1977, and because the Commission does not have the substantive authority to preclude the full recovery of ENGA purchases paid by United.

In its response to the MRT application for rehearing, Laclede argues that it is not seeking outright disallowance of ENGA costs but it does contest the view that there should be automatic flow-through under ENGA of capitalized costs associated with gas storage or that nonjurisdictional purchasers of ENGA gas should not be made to bear some portion of the costs. Also, Laclede asserts that since MRT did not directly purchase ENGA gas, it should not proceed under the recoupment provisions of the ENGA enacted regulations; rather, MRT must justify its purchased gas costs under the Natural Gas Act, appropriate Commission regulations, and MRT's tariff.

³On November 23, 1977, MRT also filed a motion to strike Laclede's response to the application for rehearing. On December 16, 1977, MRT filed a response in opposition to Laclede's response of November 14. Because of the Commission's disposition on rehearing in favor of MRT, the motion to strike is rendered moot.

ISSUE

During the 1977 winter emergency, United utilized ENGA to purchase volumes of natural gas for its system supply. As part of the authorized ENGA procedures, which will be discussed later, United allocated to its customers, one of whom is MRT, a portion of the cost incurred in entering into the emergency sales. The first question then, is whether MRT is a qualified party to flow-through to its customers the share of ENGA costs allocated to MRT by United. Secondly, if flow-through is permissible, did MRT properly assign its costs among the MRT customers?

Whether ENGA applies to MRT in this situation depends on an interpretation of the statute. Section 6(a) of the law provides:

The President may authorize any interstate pipeline or local distribution company served by an interstate pipeline (or class or category of such pipelines or companies) to contract upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for emergency supplies of natural gas for delivery before August 1, 1977-

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser as determined by the President) if (A) such natural gas is not produced from the Outer Continental Shelf and (B) the sale or transportation of such gas was not, immediately before the

date on which such contract was entered into, certificated under the Natural Gas Act, or

(2) from any intrastate pipeline, local distribution company, or other person (other than in interstate pipeline or a producer of natural gas).

Purchases made under Section 6(a) were exempt from the provisions of the Natural Gas Act⁴ and the costs incurred could not be disallowed for flow-through by the Federal Power Commission.⁵ Thus, it is clear that United, the contracting party, was entitled to recover its ENGA expenses from MRT, the customer. But, since MRT was not the contracting party, and is not a "local distribution company served by an interstate pipeline" under Section 6(a), can MRT pass through the ENGA costs allocated to it by United?

A literal reading of the statutory language could lead

⁴ Section 6(b)(1) of ENGA states in pertinent part:

The provisions of the Natural Gas Act shall not apply—

(A) to any sale of natural gas to an interstate pipeline or local distribution company under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with any such sale. . . .

⁵Section 6(b)(2) of ENGA states:

In exercising its authority under the Natural Gas Act, the Federal Power Commission shall not disallow, in whole or in part, recovery by any interstate pipeline, through the rates and charges made, demanded, or received by such pipeline, the amounts actually paid by it for natural gas purchased, transported, or other costs incurred pursuant to subsection (a).

to the conclusion that MRT, as an intermediary, is not covered by Section 6(a) of ENGA. We decline to adopt this limited view because the result would not be consistent with the Congressional intent in enacting the emergency legislation nor with the orders of the Administrator in running the program.⁶

The severe weather conditions during the 1976-77 winter season raised the prospect of curtailment into priority one if additional supplies could not be made available to the interstate market.⁷ The Federal Power Commission's emergency purchase provisions were not deemed adequate to meet the emergency, largely because of the legal consequences of an intrastate company making

⁶See *U.S. v. American Trucking Ass'ns Inc.*, 310 U.S. 534, 543 (1940).

There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words.

⁷See Statement of Harley O. Staggers, Cong. Rec. H514 (January 26, 1977), introducing the ENGA legislation.

an interstate sale in excess of sixty days.⁸

The proposed ENGA legislation was designed to authorize:

... emergency sales of intrastate natural gas to the interstate market through July 31, 1977 at prices that are fair and equitable, thereby ending legal uncertainties presently connected with such sales.⁹

Furthermore, the bill was passed on the express representation that prices approved by the President would not be subject to subsequent tampering.

It is our intention to provide price certainty so that once a specific transaction has been

⁸Letter from President Carter to the Honorable Walter F. Mondale, President of the Senate, January 26, 1977, transmitting the ENGA legislation to the Senate, introduced into the Congressional Record by Senator Robert C. Byrd, Cong. Rec. S.1538-39. The President stated:

The natural gas pipelines and the Federal Power Commission are attempting to cope with this emergency, but both agree that existing laws may be inadequate to prevent further human suffering in February. The Federal Government lacks clear and effective authority to allocate supplies needed to meet these needs. In addition, surplus gas may be available in the intrastate market that would not flow into interstate commerce under existing law.

See *Houston Pipe Line Company, Order Interpreting Section 2.68 Of The Commission's General Policy And Interpretations*, Docket No. CP77-117 (January 14, 1977), rehearing denied (March 10, 1977).

⁹President Carter's letter of January 26, 1977, *supra*, note 8.

authorized by the President, there would be no risk of a roll-back for that transaction. In any event, there would be no roll-back of the price for a specific transaction once it had been authorized by the President.¹⁰

From this we conclude that ENGA ensured price certainty to emergency purchases made thereunder by the initial purchaser. Also, we find that since the legislation was intended to protect end users, it was those persons who would bear the costs incurred. Obviously, if the argument of Laclede is accepted, not only would there be no price certainty for the ENGA purchases at issue here, but there would also be the possibility that in a rate review under the Natural Gas Act the actual users of the gas purchased would not be assessed the full value of the ENGA costs. This result is patently alien to the statutory purpose and is rejected.

Our interpretation of ENGA is supported by the actions taken thereunder by its Administrator, then FPC

¹⁰Conference Report to accompany S. 474, Report No. 95-7, 95th Cong., 1st Sess. (February 2, 1977) at 10, citing a letter dated January 31, 1977, from James R. Schlesinger, Assistant to the President, to the Honorable Adlai E. Stevenson.

Chairman Richard Dunham.¹¹ In Order No. 2¹² the Administrator interpreted Section 6(a) of ENGA and declared that:

[n]o subsequent action by the Administrator may require a refund of any monies collected or the reduction of prices in any transaction complying with the Act.¹³

¹¹Chairman Dunham was delegated the authority reserved by ENGA to the President, except under Section 3 authorizing the declaration or termination of a natural gas emergency, by Executive Order No. 11969, 42 Fed. Reg. 6791 (February 4, 1977). The President declared a natural gas emergency in Proclamation No. 4485, 42 Fed. Reg. 6789 (February 4, 1977), stating:

Abnormal weather conditions have caused prevailing temperatures in the United States, particularly in the East and Midwest, to be well below normal for the past three months. Many interstate natural gas pipelines and local natural gas distribution companies do not have sufficient supplies of flowing or stored gas to meet current demand. The shortage of natural gas available to some interstate pipelines and local distribution companies has been so severe as to cause them to curtail or to be in imminent danger of curtailing natural gas supplies to residences, small commercial establishments and other high priority users, so as to endanger life or health, and risk damage to plant or other facilities.

¹²42 Fed. Reg. 7948 (February 8, 1977).

¹³See Order No. 5, 42 Fed. Reg. 9673 (February 17, 1977) further interpreting Order No. 2.

When a transaction is made under that order, including all delivery or transportation arrangements, whether or not covered by an express authorization of the Administrator in a specific order, the transaction shall be deemed to be 'authorized' and 'ordered' for purposes of Sections 6 and 9 of the Act.

In addition, Order No. 7,¹⁴ which will be discussed in greater detail later, dealt with the allocation and billing method of the ENGA costs. The Order refers in footnote two to Section 7 of the Act, part of which reads:

[c]ompensation paid by an interstate pipeline for deliveries or emergency purchases of natural gas pursuant to . . . section 6 shall be charged to such interstate pipeline's local distribution companies in proportion to their share of such natural gas deliveries or purchases.

The Administrator interpreted that language to mean that:

[s]uch allocation shall apply to sales made to direct customers and *pipeline purchases*, as well as distribution companies.¹⁵

It is apparent then that the Administrator viewed the ENGA costs as inviolate, and that the purchases of one interstate pipeline for system supply that includes service to another interstate pipeline would still qualify for untouched flow-through to the end user.

For these reasons, we are compelled to reject Laclede's interpretation that the flow-through provisions of ENGA extend only to costs incurred by the pipeline who contracts for the emergency gas, in this case United. To so find would be to conclude that Congress intended that the allocation and recovery of ENGA-related costs could stop at a certain level and thereafter be subject to

¹⁴ 42 Fed. Reg. 22146 (May 2, 1977).

¹⁵*Id.* (emphasis added).

regulation under statutory authority other than ENGA. Yet, Section 6(b)(2) of ENGA, by its terms, indicates that no such limitation applies. Recovery of *all* costs by *any* interstate pipeline is not to be denied under the authority of the Natural Gas Act. We believe that Congress did not intend to impose restrictions other than those contained in ENGA. Congress intended that the ENGA gas and the costs therefor would flow-through to the burner tip governed only by the provisions of ENGA and actions of the Administrator pursuant thereto. The construction of ENGA urged by Laclede is neither a fair construction nor consistent with the intent of Congress.

Laclede's second assertion is that proper ENGA costs do not include capitalized costs incurred in filling storage, and that ENGA costs must be allocated to nonjurisdictional as well as jurisdictional customers. Order No. 7 delineates the procedures by which ENGA costs would be recovered. In that Order the Administrator determined that ENGA charges attributable to gas purchased for general system supply, as in the instant case, would be billed proportionately according to the pipeline's applicable curtailment plan.¹⁶ Regulations had already been enacted to define the proper billing procedures.¹⁷ Order No. 7 also provided for the allocation of costs between sales for resale, direct sales and storage injection on the

¹⁶This allocation method was decided upon as the fairest method of balancing the costs incurred and the benefits derived by the pipeline's customers. Order No. 7 at mimeo pp. 4-5.

¹⁷18 CFR § 1000.9, entitled Allocation of Charges for Emergency Purchases. *See also, Order Establishing Accounting And Billing Procedures For Interstate Natural Gas Pipelines*, Docket No. RM77-10 (February 5, 1977).

basis of volumes delivered for each month that ENGA purchases were made.

United billed MRT \$8,105,866 as its share of United's emergency gas purchases under ENGA. MRT then allocated that amount among its various services according to the following categories: jurisdictional sales for resale, \$4,162,343; nonjurisdictional direct sales, \$1,938,960; and storage injections, \$2,004,564. Laclede alleges that because of the interposition of storage between MRT's purchases and deliveries, the allocation of costs for individual monthly periods may represent a misallocation of costs that is unduly prejudicial to the company's jurisdictional customers.

Laclede's concern appears to be with the differing circumstances (customers and gas usage change between winter and summer) between the time that gas is purchased for injection into storage and the time these volumes are withdrawn from storage for delivery to distributors. For example, the second allocation by MRT occurs when the cost previously assigned to storage, \$2,004,564, are divided between jurisdictional (\$1,754,512) and nonjurisdictional (\$250,052) customers, based upon projected winter season volumes. Thus, MRT has sought herein to recover the \$4,162,342 originally assigned to sales for resale and the \$1,754,512 originally assigned to storage and later allocated to jurisdictional customers.

As to the \$4,162,342, MRT elected to bank its costs, pursuant to Order No. 7, for recovery over the eleven month period commencing October 1, 1977. MRT computed a surcharge for each of its customers based on their purchases during the months when the costs were incurred and the customer's anticipated purchases for the

proposed recovery period, October 1, 1977 to August 31, 1978. In order to recover the \$1,754,512, MRT set a separate uniform storage surcharge, also to be effective for the October to August period. Both surcharges will remain in effect according to Order No. 7 until the banked ENGA costs, plus applicable carrying charges, have been fully repaid.

Natural gas injected during the summer months is withdrawn during the winter heating season. Lower priority and nonjurisdictional interruptible customers that may be served in the summer would normally be cut off during the winter. Thus, in allocating costs for ENGA purchases made to fill depleted storage in anticipation of the coming (1977-1978) winter, using the actual withdrawals for this winter as the measure of payment assigns the burden of payment of those that benefit from the storage. We recognize that during certain of the winter months both ENGA gas and storage withdrawals were required to meet market requirements; since both sources were used for system supply, it is equitable to assign the ENGA gas costs on the basis of monthly deliveries or sales.

ENGA was enacted to help alleviate a critical natural gas shortage that had the potential for endangering life and property. Storage balances were critically low and there was uncertainty as to whether sufficient gas supply would be available during the ensuing summer to replenish these reservoirs. Section 6 of ENGA provided for emergency purchases through July 31, 1977, for the express purpose of filling storage.¹⁸ In acknowledgement

¹⁸Senator Stevenson, Senate manager of ENGA, stated, Cong. Rec. S1670 (January 31, 1977):

This measure, which we act upon today, is also a measure to protect the country for next winter because it will, through its pricing provisions, enable the interstate pipeline companies to buy such stores of natural gas as are available and restock their depleted natural gas storage facilities.

of this goal, the Administrator provided for the allocation, on a volumetric basis, of emergency gas costs between storage and sales. Our review of the MRT rate filings and other filings in this docket results in the conclusion that the company's method of allocation, which was, in our judgment, consistent with Order No. 7, properly assigned to its jurisdictional customers a reasonable level of costs.

Laclede has also argued that carrying costs on storage injection under the existing curtailment plan is not properly recoverable under ENGA. The regulations enacted in Order No. 7 provide specifically to the contrary.

§ 1000.9(e)(i)

The following billing procedures may be utilized by interstate pipeline companies to *flow-through all authorized costs* of ENGA purchases pursuant to Section (6) of the Act:

- (2) If an interstate pipeline company's monthly ENGA purchases exceed 2.0 percent of its forecasted monthly sales in its September 1976 FPC Form No. 16 for the months of February and March 1977 and for ensuing months its April 1977 FPC Form No. 16, alternate billing options are available to the company. ENGA purchases would be allocated pro rata to its customers and *storage* on the basis of total sales and *general system storage injections* for the billing month and may be recovered as follows:

* * *

- (ii) The Company may elect to bank the ENGA costs allocated to each customer through July 31, 1977. These banked costs, *plus carrying costs* computed at nine (9) percent per annum, would

be recovered from each customer over an eleven month period beginning October 1, 1977 and ending August 31, 1978. Individual surcharges for each customer would be computed by dividing each customer's banked costs by each customer's forecasted eleven month sales included in the pipeline company's September 1977 FPC Form No. 16.

- (3) If an interstate pipeline company elects to utilize the revenue recovery procedures provided in 2(ii) above, each individual surcharge will remain in effect until the interstate pipeline company recovers banked costs, *plus applicable carrying charges*. (footnote omitted — emphasis added)

Since MRT is seeking merely to flow-through authorized ENGA costs according to the procedures instituted by the Administrator, Laclede's allocation argument has no basis and is rejected.

Based on the foregoing considerations, the Commission concludes that under the circumstances presented by this case the Commission is without authority to suspend or disallow rates derived from authorized ENGA purchases calculated in accordance with the Administrator's Order No. 7. The Commission's letter order of September 30, 1977, shall be vacated, and MRT's proposed tariff sheet shall be accepted for filing, effective October 1, 1977.

The Commission Finds:

- (1) It is appropriate and in the public interest that MRT's application for rehearing be granted as hereinafter ordered.

- (2) The issues raised by Laclede in its September 27, 1977, filing would require Commission action which is in excess of its authority or which is inconsistent with the provisions of the Emergency Natural Gas Act of 1977 and orders issued pursuant thereto. The issues raised by Laclede in its September 27, 1977, filing are without merit.

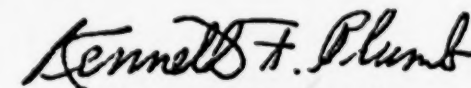
The Commission Orders:

- (A) MRT's application for rehearing is granted.
- (B) The FPC's letter order of September 30, 1977, in this docket, is vacated.
- (C) Alternate Original Sheet No. 3B to MRT's Gas Tariff, First Revised Volume No. 1 is accepted for filing effective October 1, 1977.
- (D) This proceeding is terminated.
- (E) Illinois Power Company is hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided*, that participation by the specifically set forth in the petition to intervene: *Provided, further*, that the admission of petitioner shall not be construed as recognition by the Commission that petitioners might be aggrieved by any order or orders entered in this proceeding.

- (f) The Secretary shall cause prompt publication of this order in the Federal Register.

By the Commission.

(S E A L)



Kenneth F. Plumb,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PIPELINE RATES:
[Rehearing, Emergency
Natural Gas Act of
1977, Jurisdiction]

Before Commissioners:

Charles B. Curtis, Chairman; Georgiana Shelton
and George R. Hall.

Mississippi River) Docket No. RP72-149
Transmission Corporation	(PGA77-10)
)

ORDER DENYING REHEARING,¹
DENYING MOTION TO STRIKE, AND GRANTING
WAIVER OF REGULATIONS

(Issued April 24, 1978)

On March 29, 1978, Laclede Gas Company (Laclede) filed for rehearing of an order issued February 27, 1978, in the captioned docket granting rehearing of an application submitted by Mississippi River Transmission Corporation (MRT). The Commission reversed its prior order dated September 30, 1977, suspending a purchased gas adjustment (PGA) type filing by MRT; first because the Commission was without jurisdiction to suspend filings for

¹Laclede in its filing questions whether rehearing lies to the February 27, 1978 order, which was itself an order on rehearing. Since that order reversed a prior Commission decision, thereby making Laclede an aggrieved party for the first time, rehearing must be sought under Section 19 of the Natural Gas Act prior to any request for judicial review. *Pan American Petroleum Corp. v. FPC*, 322 F.2d 999 (D.C. Cir. 1963).

the flow-through of costs incurred pursuant to the Emergency Natural Gas Act of 1977 (ENGA), and second, since the method of allocation of ENGA costs by MRT between its jurisdictional and nonjurisdictional customers was reasonable under ENGA and the Administrator's Order No. 7, no further proceedings were necessary and the flow-through was permitted.

On April 10, 1978, MRT filed a motion to strike the Laclede filing, or in the alternative, a request to waive the Regulations to permit a response to Laclede's petition for rehearing. MRT's motion to strike rests in the assertion that Laclede's filing is late under Section 1.34(d), but since we have determined that Laclede has filed a timely application for rehearing, MRT's motion to strike is denied. In order to avail all parties of a full opportunity to be heard, MRT's motion to waive Section 1.34(d) in order to permit the filing of a response to the Laclede petition will be granted.

Laclede asserts that the Commission erred in not requiring a hearing to investigate MRT's allocation of its ENGA charges. Laclede bases its request for rehearing on the argument that the Commission erred when it concluded that it has no jurisdiction to review the PGA-type flow-through, and that the Commission's determination to permit the pass-through was reached without reference to its appropriateness under Order No. 7 or MRT's tariff. Since this contention is incorrect, Laclede's petition for rehearing will be denied.

In its February 27, 1978 order, the Commission examined at great length two principal points. First, whether MRT was a proper party under ENGA to flow-through its emergency purchase costs and whether any

part of such costs could be disallowed by this Commission. We concluded that MRT was an eligible entity under ENGA and that ENGA mandated full recovery of all properly incurred costs. We do not understand Laclede to argue otherwise.

The second conclusion of the Commission, however, is disputed by Laclede, and that is the propriety of MRT's allocation of its ENGA costs to its jurisdictional purchasers, such as Laclede. Contrary to Laclede's argument, the Commission carefully reviewed the MRT submission, with specific reference to Order No. 7.² The Commission found that:

[o]ur review of the MRT rate filings and the other filings in this docket results in the conclusion that the company's method of allocation, which was, in our judgment, consistent with Order No. 7, properly assigned to its jurisdictional customers a reasonable level of costs.³

Thus, as opposed to Laclede's claim that the Commission denied its jurisdiction to review the appropriateness of the MRT allocation, the Commission clearly did assert such jurisdiction by making the aforementioned analysis under Order No. 7. Laclede may disagree with the Commission's conclusion, but the company's claim on rehearing that the Commission improperly failed to exercise its jurisdiction is plainly incorrect.

²See mimeo pp. 9-12 of the February 27, 1978 order.

³*Id.* at p. 11.

According to Laclede, if the Commission had acted correctly, it should have ordered a hearing to be held because "Laclede *believes* that MRT has over-allocated the costs of ENGA gas to its on-system sales by allocating no part of those ENGA costs to its off-system sales." (emphasis added).⁴ In its order of February 27, 1978, the Commission noted that MRT was billed \$8,105,866 for ENGA purchases. Of that amount, \$2,189,012 was assigned to nonjurisdictional customers (\$1,938,960 direct sales plus \$250,052 nonjurisdictional storage injection). Again, Laclede has misinterpreted the Commission order when it asserts that MRT failed to allocate *any* ENGA costs to off-system customers.

Laclede then makes reference to certain exchange and sales arrangements with off-system customers by way of an offer of proof that MRT's allocation of ENGA costs is suspect, thereby requiring an evidentiary hearing. Laclede notes that MRT's latest Form 16 filing, dated October 14, 1977, describes an exchange agreement with Natural Gas Pipeline Company of America (Natural) that had an imbalance of deliveries during July of 1977. From this, Laclede apparently asserts that this "sale" would not have been possible without the earlier ENGA purchases and that Natural should therefor bear some portion of the ENGA costs allocated to MRT by United. Laclede makes a similar claim with respect to a 60-day emergency sale from MRT to Natural in August and September of 1977.

In reply, MRT points out that the arrangement Laclede characterizes as a "sale" is really an exchange agreement, certificated by the Commission,⁵ that facilitates the delivery to MRT of the production from a self-help exploration and development measure. The delivery imbalance referred to by Laclede for July of 1977 was

⁴Application for Rehearing, p. 8.

⁵Docket Nos. CP75-224, *et al.* (June 19, 1975).

repaid by the end of that summer season. At no time was any of this company owned gas sold to Natural. As to the 60-day sale, MRT states that this sale was commenced after the ENGA deliveries from United had ceased and that the source of supply was completely different.

We have reviewed Laclede's arguments on rehearing in the context of a further analysis of the MRT filing approved in our February 27, 1978 order. Petitioner has raised no new facts or legal principles that require the modification of the February 27, 1978 order. Accordingly, we will deny Laclede's application for rehearing in its entirety.

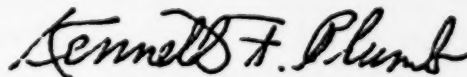
The Commission Finds:

- (1) The Laclede application for rehearing of the order in this proceeding issued February 27, 1978 should be denied.
- (2) The MRT motion to strike should be denied. The alternative MRT motion to waive Section 1.34(d) of the Commission's Regulations to permit the filing of a response to the Laclede application for rehearing should be granted.

The Commission Orders:

- (A) The application for rehearing filed by Laclede is denied.
- (B) The motion of MRT to strike is denied. The motion of MRT to waive Section 1.34(d) of the Commission's Regulations is granted.

By the Commission.
(S E A L)



Kenneth F. Plumb,
Secretary.

APPENDIX C

APPENDIX C**Relevant Statutory Provisions.**

Title	Page
Emergency Natural Gas Act of 1977, 15 U.S.C. § 717 note (Supp. 1 1979)	A-38
Natural Gas Act, Sections 1, 4, and 19 (15 U.S.C. §§ 717, 717c & 717r)	A-57
Natural Gas Policy Act, Sections 301, 302, 506(c), 601 (15 U.S.C.A. §§ 3361, 3362, 3416(c), 3431)	A-64

PUBLIC LAW 95-2 [S.474]; Feb. 2, 1977

EMERGENCY NATURAL GAS ACT OF 1977

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Natural Gas Act of 1977".

Emergency
Natural Gas Act
of 1977.
15 USC 717 note.

DEFINITIONS

Sec. 2. As used in this Act:

15 USC 717 note.

(1) The term "high-priority use" means

(A) use of natural gas in a residence;

(B) use of natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day; or

(C) any other use of natural gas the termination of which the President determines would endanger life, health, or maintenance or physical property.

(2) The term "interstate pipeline" means any natural-gas company, as defined in section 2(6) of the Natural Gas Act, which is engaged in the transportation by pipeline of natural gas.

15 USC 717a.

(3) The term "intrastate pipeline" means any person (other than an interstate pipeline) engaged in the transportation by pipeline of natural gas.

(4) The term "interstate natural gas" means natural gas (other than natural gas transported pursuant to a transportation certificate issued under 18 C.F.R. 2.79) transported by an interstate pipeline in a facility which is certificated under the Natural Gas Act or which would be required to be so certificated but for section 1(c) of such Act.

15 USC 717w.
15 USC 717.

(5) The term "local distribution company" means any person (including a governmental entity) which receives natural gas for local distribution and resale to natural gas users.

(6) The term "antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14-19, 20, 21, 22-27), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8-9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a), and similar State laws.

(7) The term "State" means any State of the United States and the District of Columbia.

PRESIDENTIAL DECLARATION

Natural gas
emergency.
15 USC 717 note.

Sec. 3. The President may declare a natural gas emergency if he finds that a

severe natural gas shortage endangering the supply of natural gas for high-priority uses exists or is imminent in the United States or in any region thereof and that the exercise of his authorities under section 4 is reasonably necessary, having exhausted other remedies to the maximum extent practicable, to assist in meeting requirements for such uses. Such emergency shall be terminated when the President finds that such shortages no longer exist and are no longer imminent.

Termination.

EMERGENCY DELIVERIES AND TRANSPORTATION OF NATURAL GAS

Sec. 4. (a)(1) If the President finds it necessary to assist in meeting the requirements for high-priority uses of natural gas (including short-term storage replenishment or injection for protection of high-priority uses), on the basis of a notification by the Governor of any State pursuant to subsection (c) or on the basis of other information available to the President, the President may, during a natural gas emergency declared under section 3, by order, require—

15 USC 717 note.

Requirements for
delivery by
interstate or
intrastate
pipelines.

(A) any interstate pipeline to make emergency deliveries of, or to transport, interstate natural gas to any other interstate pipeline or to any local distribution company served by an interstate pipeline for purposes of meeting such requirements;

(B) Any intrastate pipeline to transport interstate natural gas from any interstate pipeline to another interstate pipeline or to any local distribution company served by an interstate pipeline for purposes of meeting such requirements; or

(C) the construction and operation by any pipeline of any facilities necessary to effect such deliveries or transportation.

No such delivery or transportation may continue after April 30, 1977, or after the President terminates the emergency declared under section 3, whichever is earlier.

Order,
restrictions.

(2) No order may be issued under this subsection unless the President determines that such order will not—

(A) create for the interstate pipeline delivering interstate natural gas a supply shortage which will cause such pipeline to be unable to meet the requirements for highpriority uses served, directly or indirectly, by such pipeline;

(B) result in a disproportionate share of deliveries or curtailments of natural gas experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders applicable to other interstate pipelines (as determined by the President); and

(C) require transportation of natural gas by any pipeline in excess of its available transportation capacity.

(3) In issuing such order the President shall also consider the relative availability of alternatent of electric power is supplied by nuclear power in Japan.

Alternative fuel,
availability.

(b) Compliance by any pipeline with an order issued under subsection (a) shall not subject such pipeline to regulation under the Natural Gas Act (15 U.S.C. 717 et seq.) or to regulation as a common carrier under any provision of State or Federal law. No action required to be taken under an order issued under subsection (a) shall be subject to any provision of the Natural Gas Act and any such order shall supersede any provision of a certification, or other requirement, under the Natural Gas Act which is inconsistent with such order.

(c)(1) The Governor of any State may notify the President of any finding by such Governor that a shortage of natural gas within such State, endangering the supply of natural gas for high-priority uses, exists or is imminent and that the State, and agencies and instrumentalities thereof, have exercised their authority to the fullest extent practicable and reasonable under the circumstances to overcome such shortage.

Notification of
shortage by State
Governor.

(2) The Governor shall submit, together with any notification under paragraph

(1), information upon which he has based his finding under such paragraph, including—

(A) volumes of natural gas required to meet the requirements for high-priority uses in such State;

(B) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas available in such State; and

(C) such other information as the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed in such State.

(d) The President may request that representatives of interstate pipelines, intrastate pipelines local distribution companies, and other persons meet and provide assistance to the President in carrying out his authority under this section.

Authority to
obtain
information.

(e)(1) In order to obtain information to carry out his authority under this Act, the President may—

(A) sign and issue subpoenas for the attendance and testimony of witnesses

and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise, as the President may determine; and

(C) secure, upon request, any information from any Federal department or executive agency.

(2) The appropriate United States district court may, upon petition of the Attorney General at the request of the President, in the case of refusal to obey a subpoena or order of the President issued under this subsection, issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(f)(1) If the parties to any order issued under subsection (a) fail to agree upon the terms of compensation for deliveries (which may include compensation in kind) or transportation required pursuant to such order, the President, after a hearing held either before or after such order takes effect, shall, by supplemental order, prescribe the amount of compensation (which may in-

Compliance
order.

Compensation.
Hearing:
supplemental
order.

clude compensation in kind) to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting such gas.

(2) If, for the purpose of a supplemental order pursuant to paragraph (1), the party making emergency deliveries pursuant to subsection (a)—

(A) indicates a preference for compensation in kind, the President shall direct that compensation in kind be provided by August 1, 1977, to the maximum extent practicable,

(B) indicates a preference for compensation, or the President determines pursuant to paragraph (A) of this subsection that any portion thereof cannot practicably be compensated in kind, the President shall calculate the amount of compensation for deliveries of natural gas, based upon the amount required to make the interstate pipeline delivering such natural gas and its local distribution companies whole for loss of sales resulting therefrom; including the actual amount paid by such interstate pipeline or any of its local distribution companies for the volumes of natural gas or higher cost gas such as synthetic natural gas which were needed

to replace natural gas delivered pursuant to an order under subsection (a); and for transportation, storage, and other expenses, based upon reasonable costs, as determined by the President.

(g) In order to effect the purposes of this Act, the President shall monitor the operation of any order made pursuant to this section to assure that natural gas delivered pursuant to this section is applied to high-priority uses only.

Delivery to high
priority users only.

ANTITRUST PROTECTIONS

Sec. 5. (a) There shall be available as a defense for any person to civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action taken or meeting held pursuant to a request or order of the President under section 4(a) or (d) of this Act, if—

15 USC 717 note.

(1) such action was taken or meeting held solely for the purpose of complying with the President's request or order;

(2) such action was not taken for the purpose of injuring competition; and

(3) such person complied with the

requirements of subsection (b) of this section.

Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(b) A meeting held pursuant to a request by the President under section 4(d) or pursuant to an order under section 4(a) complies with the requirements of subsection (a) if—

(1) There is present at such meeting a full-time Federal employee designated for such purposes by the Attorney General;

(2) a full and complete record of such meeting is taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

(3) the Attorney General and the Federal Trade Commission have the opportunity to participate from the beginning in the development and

carrying out of agreements and actions under sections 4(a) and 4(d), in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this Act; and

(4) such other procedures as may be specified in such request or order are complied with.

EMERGENCY PURCHASES

Sec. 6. (a) The President may authorize any interstate pipeline or local distribution company served by an interstate pipeline (or class or category of such pipelines or companies) to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for emergency supplies of natural gas for delivery before August 1, 1977—

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser as determined by the President) if (A) such natural gas is not produced from the Outer Continental Shelf and (B) the sale or transportation of such gas was

15 USC 717w.

Emergency
purchase
contract; court
approval.

15 USC 717w.

not, immediately before the date on which such contract was entered into, certificated under the Natural Gas Act, or

(2) from any intrastate pipeline, local distribution company, or other person (other than in interstate pipeline or a producer of natural gas).

The president may not authorize any emergency purchase contract under this subsection for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court supervision as of January 1, 1977, unless the court approves.

(b)(1) The provisions of the Natural Gas Act shall not apply—

(A) to any sale of natural gas to an interstate pipeline or local distribution company under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with any such sale; or

(B) to any natural gas company (within the meaning of the Natural Gas Act) solely by reason of any such sale or transportation.

(2) In exercising its authority under the Natural Gas Act, the Federal Power

Commission shall not disallow, in whole or in part, recovery by any interstate pipeline, through the rates and charges made, demanded, or received by such pipeline, the amounts actually paid by it for natural gas purchased, transported, or other costs incurred pursuant to subsection (a).

(c)(1) The President may, by order, require any pipeline to transport such natural gas, and to construct and operate such facilities for transportation of natural gas, as may be necessary to carry out contracts authorized under subsection (a). The costs of any such required construction shall be paid by the party receiving such natural gas. No such order shall require any pipeline to transport any natural gas in excess of such pipeline's available capacity.

(2) Compliance by any pipeline with any order under this subsection shall not subject such pipeline to regulation under the Natural Gas Act or to regulation as a common carrier under any provision of State law.

(d) As used in this section, the term "Outer Continental Shelf" has the same meaning as such term has under section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

"Outer
Continental
Shelf"

ADJUSTMENT IN CHARGES FOR LOCAL DISTRIBUTION COMPANIES

15 USC 717 note.

Sec. 7. Compensation received by an interstate pipeline pursuant to section 4 in excess of the amount such pipeline would have charged its local distribution companies shall be credited to such local distribution companies in proportion to their share of any natural gas not delivered together with credits necessary to make whole any local distribution company which replaced such natural gas with higher cost gas such as synthetic natural gas as prescribed in section 4(f)(2)(B). Compensation paid by an interstate pipeline for deliveries or emergency purchases of natural gas pursuant to section 4 or section 6 shall be charged to such interstate pipeline's local distribution companies in proportion to their share of such natural gas deliveries or purchases.

RELATIONSHIP TO NATURAL GAS ACT

15 USC 717 note.

Sec. 8. Except as expressly provided in this Act, nothing contained in this Act shall be interpreted to change, modify, or otherwise affect rules, regulations, or other regulatory requirements or procedures of the Federal Power Commission pursuant to the provisions of the Natural Gas Act.

15 USC 717w.

EFFECT OF CERTAIN CONTRACTUAL OBLIGATIONS

Sec. 9. (a) There shall be available as a defense to any action brought for breach of contract under Federal or State law arising out of any act or omission that such act was taken or that such omission occurred for purposes of complying with any order issued under section 4(a). 15 USC 717 note.

(b) Any contractual provision—

(1) prohibiting the sale or commingling of natural gas subject to such contract with natural gas subject to the provisions of the Natural Gas Act, or Prohibition of sale or commingling of natural gas.

(2) terminating any obligation under any such contract as a result of such sale or commingling,

is hereby declared against public policy and unenforceable with respect to such natural gas if an order under section 4(a) or an authorization under section 6(a) applies to the delivery, transportation, or contract for supplies of such natural gas.

(c) The amounts and prices of any natural gas purchases pursuant to an order under section 4(a), an authorization under section 6(a), or a contract entered into pursuant to 18 C.F.R. 2.68 after the date of the enactment of this Act and before August 1, 1977, shall not be taken into account for

purposes of any contractual provision which determines the price of any natural gas (or terminates the contract for the sale of natural gas) on the basis of sales of other natural gas.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

15 USC 717 note.
15 USC 551.

Sec. 10. (a) Subchapter II of chapter 5 title 5 of the United States Code (other than sections 554, 556, and 557 thereof) shall apply to orders and other actions under this Act.

12 USC 1904
note.

(b) Except with respect to enforcement of orders or subpoenas under section 4(e), the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended, shall have exclusive original jurisdiction to review all civil cases and controversies under this Act, including any order issued, or other action taken, under this Act. The Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 4(e) of this Act; such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days of the entry of judgment by the district court.

Filing of notice of
appeal.

(c) Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, by the President under this Act.

ENFORCEMENT

Sec. 11. (a) Any person who violates an order or supplemental order issued under section 4 or an order section 6(c) shall be subject to a civil penalty of not more than \$25,000 for each violation of such order. Each day of violation shall constitute a separate offense.

(b) Any person who willfully violates an order or supplemental order issued under section 4 or an order under section 6(c) shall be fined not more than \$50,000 for each violation of such order. Each day of violation shall constitute a separate violation.

(c) Whenever it appears to the President that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order issued under section 4(a), any supplemental order issued under section 4(f), or any order under section 6(c), the President may request the Attorney General to bring a civil action to enjoin such acts or practices and, upon showing, a temporary

15 USC 717 note.

Mandatory
injunctions.

restraining order or preliminary or permanent injunction shall be granted without bond. In any such action, the court may also issue mandatory injunctions commanding any person to comply with any such order or supplemental order.

REPORTING

Report to
President.
15 USC 717 note.

Sec. 12. (a) In issuing any order under section 4(a) or granting any authorization under section 6, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order or authorization shall be reported to him on a weekly basis and such reports shall be made available to the Congress.

Report to
Congress.

(b) The President shall report to Congress not later than October 1, 1977, respecting his actions under this Act.

DELEGATION OF AUTHORITIES

15 USC 717 note.

Sec. 13. The President may delegate all or any portion of the authority granted to him under this Act to such executive agencies (within the meaning of 5 U.S.C. 105) or officers of the United States as he determines appropriate, and may authorize such redelegation as may be appropriate. Except with respect to section 552 of title 5 of the United States Code, any officer or

executive agency of the United States to which authority is delegated or redelegated under this Act shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.

PREEMPTION OF INCONSISTENT STATE OR LOCAL ACTION

Sec. 14. Any order issued pursuant to this Act shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

15 USC 717 note.

Approved February 2, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-7 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 123 (1977):

Jan. 26, 28, 31, considered and passed Senate.

Feb. 1, considered and passed House, amended.

Feb. 2, Senate and House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL
DOCUMENTS, Vol. 13, No. 6:

Feb. 2, President statement.

NATURAL GAS ACT

Sections 1, 4 and 19, 15 U.S.C. §§ 717, 717c and 717r

§ 717. Necessity for Regulation of Natural Gas Companies

(a) As disclosed in reports of the Federal Trade Commission made pursuant to S.Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(c) The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed with such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission.

The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

§ 717c. Rates and Charges; Schedules; Suspension of New Rates

(a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in

convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classification, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a

statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

§ 717r. Rehearings; Court Review of Orders

(a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the

Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of Title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the

Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28.

(c) The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

NATURAL GAS POLICY ACT

Sections 301, 302, 506(c), 601, 15 U.S.C.A. §§ 3361, 3362, 3416(c), 3431

TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

Subtitle A—Emergency Authority

SEC. 301. DECLARATION OF EMERGENCY.

(a) **Presidential Declaration.**—The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under section 302 or section 303 is reasonably necessary, having exhausted other alternatives to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) **Limitation.**—

(1) **Expiration.**—Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a), shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) does not exist or is not imminent; or

(B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) **Extensions.**—Nothing in this subsection shall prohibit the President from extending, under subsection (a), any emergency (or extension thereof), previously declared under subsection (a), upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

SEC. 302. EMERGENCY PURCHASE AUTHORITY.

(a) **Presidential Authorization.**—During any natural gas supply emergency declared under section 301, the President may, by rule or order, authorize any interstate pipeline or local distribution company served by any interstate pipeline to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for the purchase of emergency supplies of natural gas—

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser, as determined by the President) if—

(A) such natural gas is not produced from the Outer Continental Shelf; and

(B) the sale or transportation of such natural gas was not pursuant to a certificate issued under the Natural Gas Act immediately before the date on which such contract was entered into; or

(2) from any intrastate pipeline, local distribution company, or other person (other than an interstate pipeline or a producer of natural gas).

(b) **Contract Duration.**—The duration of any contract authorized under subsection (a) may not exceed 4

months. The preceding sentence shall not prohibit the President from authorizing under subsection (a) a renewal of any contract, previously authorized under such subsection, following the expiration of such contract.

(c) Related Transportation and Facilities.—The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any contract authorized under subsection (a). The costs of any construction or transportation ordered under this subsection shall be paid by the purchaser of natural gas under the contract with respect to which such order is issued. No order to transport natural gas under this subsection shall be paid by the purchaser of natural gas under the contract with respect to which such order is issued. No order to transport natural gas under this subsection shall require any pipeline to transport natural gas in excess of such pipeline's available capacity.

(d) Maintenance of Adequate Records.—The Commission shall require any interstate pipeline or local distribution company contracting under the authority of this section for natural gas to maintain and make available full and adequate records concerning transactions under this section, including records of the volumes of natural gas purchased under the authority of this section and the rates and charges for purchase and receipt of such natural gas.

(e) Special Limitation.—No sale under any emergency purchase contract under this section for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court

supervision as of January 1, 1977, may take effect unless the court approves.

SEC. 506. JUDICIAL REVIEW

(c) Judicial Review of Emergency Orders.—Except with respect to enforcement of orders or subpoenas under section 304(a), the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended, shall have exclusive original jurisdiction to review all civil cases and controversies under section 301, 302, or 303, including any order issued, or other action taken, under such section. The Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 304(a)(2); such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days after the entry of judgment by the district court. Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, under section 301, 302, or 303.

TITLE VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS

SEC. 601. COORDINATION WITH THE NATURAL GAS ACT.

(a) Jurisdiction of the Commission Under the Natural Gas Act.—

(1) Sales.—

(A) Natural Gas Not Committed Or Dedicated.—For purposes of section (b) of the Natural Gas Act, effective on the first day of the first month beginning after the date of the enactment of this Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to natural gas which was not committed or dedicated to interstate commerce as of the day before the date of enactment of this Act solely by reason of any first sale of such natural gas.

(B) Committed Or Dedicated Natural Gas.—Effective beginning on the first day of the first month beginning after the date of the enactment of this Act, for purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act and which is—

(i) high-cost natural gas (as defined in section 107(c)(1), (2) (3), or (4) of this Act);

(ii) new natural gas (as defined in Section 102(c) of this Act); or

(iii) natural gas produced from any new, onshore production well (as defined in section 103(c) of this Act).

(C) Authorized Sales Or Assignments.—For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply by reason of any sale of natural gas—

(i) authorized under section 302(a) or 311(b); or

(ii) pursuant to any assigned authorized under section 312(a).

(D) Natural-Gas Company.—For purposes of the Natural Gas Act, the term “natural-gas company” (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission do not apply to such sale solely by reason of subparagraph (A), (B), or (C) of this paragraph.

(E) Alaskan Natural Gas.—Subparagraph (B) (ii) and (iii) shall not apply with respect to natural gas produced from the Prudhoe Bay unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(2) Transportation.—

(A) Jurisdiction of the Commission.—For purposes of section 1(b) of the Natural Gas Act the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply to any transportation in interstate commerce of natural gas if such transportation is—

(i) pursuant to any order under section 302(c) or section 303 (b), (c), (d), or (h) of this Act; or

(ii) authorized by the Commission under section 311(a) of this Act.

(B) Natural-Gas Company.—For purposes of the Natural Gas Act, the term “natural-gas company” (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph.

(b) Charges Deemed Just and Reasonable.—

(1) Sales.—

(A) First Sales.—Subject to paragraph (4), for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if—

(i) such amount does not exceed the applicable maximum lawful price established under title I of this Act; or

(ii) there is no applicable maximum lawful price solely by reason of the elimination of price controls pursuant to subtitle B of title I of this Act.

(B) Emergency Sales.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any sale authorized under section 302(a) shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established under such section and applicable to such sale.

(C) Sales by Intrastate Pipelines.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any sale authorized by the Commission under section 311(b) shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established by the Commission and applicable to such sale.

(D) Assignments.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid pursuant to the terms of any contract with respect to that portion of which the Commission has authorized an assignment authorized under section 312(a) shall be deemed to be just and reasonable if such amount does not exceed the applicable maximum lawful price established under title I of this Act.

(E) **Affiliated Entities Limitation.**—For purposes of paragraph (1), in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid in any first sale shall be deemed to be just and reasonable if, in addition to satisfying the requirements of such paragraph, such amount does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline.

(2) **Other Charges.**—

(A) **Allocation.**—For purposes of section 4 and 5 of the Natural Gas Act, any amount paid by any interstate pipeline for transportation, storage, delivery or other services provided pursuant to any order under section 303 (b), (c), or (d) of this Act shall be deemed to be just and reasonable if such amount is prescribed by the President under section 303(h)(1).

(B) **Transportation.**—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid by any interstate pipeline for any transportation authorized by the Commission under section 311(a) of this Act shall be deemed to be just and reasonable if such amount does not exceed that approved by the Commission under such section.

(c) **Guaranteed Passthrough.**—

(1) **Certificate May Not be Denied Based Upon Price.**—The Commission may not deny, or condition

the grant of, any certificate under section 7 of the Natural Gas Act based upon the amount paid in any sale of natural gas, if such amount is deemed to be just and reasonable under subsection (b) of this section.

(2) **Recovery of Just and Reasonable Prices Paid.**—For purposes of sections 4 and 5 of the Natural Gas Act, the Commission may not deny any interstate pipeline recovery of any amount paid with respect to any purchase of natural gas if—

(A) under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act, and

(B) such recovery is not inconsistent with any requirement of any rule under section 201 (including any amendment under section 202),

except to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.